

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2019-3 Rule Number He-C 1550

1. Agency Name & Address: Dept. of Health & Human Services Office of the Commissioner 129 Pleasant St. Concord, NH 03301	2. RSA Authority: <u>RSA 126:27</u> 3. Federal Authority: _____ 4. Type of Action: Adoption <u>X</u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
5. Filing Date: January 4, 2019	

6. Short Title: **Submission of Health Care Facility Financial Data**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

The proposed interim rule, He-C 1550, specifies the requirements for health care facilities licensed under RSA 151 to file financial health care data with the Department, including the types of financial data to be filed, the timeframes and format for filing, the penalties for not filing required data, and provisions for the confidentiality of such data.

The former rule expired on 1/1/2019, and this proposal will minimize the time between expiration of the rule and its subsequent readoption pursuant to RSA 541-A:19, I(e). The proposed interim rule is being adopted without changes from the expired rule; however, the Department notes that RSA 151-C, cited in the rule and used for the definition of "confidential information," has been repealed effective 6/30/2016. The Department is ascertaining whether He-C 1550 is needed, and if the Department determines that the rule is necessary, it will enter into regular rulemaking and will address the citation to RSA 151-C at that time.

9. Listing of people, enterprises, and government agencies affected by the rule:

All health care facilities licensed under RSA 151 are affected by this rule.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

Rule	Statute Implemented
He-C 1550.01	RSA 126:25
He-C 1550.02	RSA 126:25
He-C 1550.03	RSA 126:25, I(a)
He-C 1550.04	RSA 126:25, I(a)-(c)
He-C 1550.05	RSA 126:25
He-C 1550.06	RSA 126:29
He-C 1550.07	RSA 126:28; RSA 151-C:2, XI

11. Summary of the effect upon the state if the rule were not adopted:

If the interim rule were not adopted, the Department would not be able to have specific requirements for the submission of health care facility financial information from nursing homes, acute care hospitals, residential care facilities, specialty hospitals or other health care facilities licensed under RSA 151.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

January 18, 2019

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

Not applicable.

FIS # _____, dated _____

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

2. Cite the Federal mandate. Identify the impact of state funds:

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

B. To State citizens and political subdivisions:

C. To Independently owned businesses:

CHAPTER He-C 1500 DATA SUBMISSION AND RELEASE OF HEALTH CARE FACILITY DISCHARGE DATA

Adopt He-C 1550, previously effective 1-1-11 (Document #9781), and expired 1-1-19, to read as follows:

PART He-C 1550 SUBMISSION OF HEALTH CARE FACILITY FINANCIAL DATA

Statutory Authority: RSA 126:27, I-III, V

He-C 1550.01 Purpose and Scope. This part contains the requirements for the submission of health care facility financial information from nursing homes, acute care hospitals, residential care facilities, specialty hospitals, or other health care facilities licensed under RSA 151.

He-C 1550.02 Definitions.

(a) “Certified financial statements” means the annual financial statements that have been subject to an independent audit in accordance with generally accepted auditing standards, including a certificate of audit or the independent auditor report that expresses an opinion as to whether or not the accompanying financial statements are presented fairly in accordance with generally accepted accounting principles.

(b) “Commissioner” means the commissioner of the New Hampshire department of health and human services or his or her designee.

(c) “Confidential financial information” means “confidential financial information” as defined in RSA 151-C:2, XI.

(d) “Department” means the New Hampshire department of health and human services.

(e) “Financial statements” means documents including, but not limited, to a balance sheet, a statement of operations, a cash flow statement, and notes to financial statements, and, if applicable, consolidating and supplemental financial schedules.

(f) “Health care facility” means a public or private, proprietary or not-for-profit entity or institution providing health services licensed under RSA 151:2 including, but not limited to:

- (1) Hospitals and infirmaries;
- (2) Home health care providers;
- (3) Laboratories performing tests or analyses of human samples;
- (4) Facilities or portions of a facility operating as an outpatient rehabilitation clinic, ambulatory surgical center, hospice, emergency medical care center, drop-in or walk-in care center, dialysis center, birthing center, or other entity where health care associated with illness, injury, deformity, infirmity, or other physical disability is provided;
- (5) Residential care facilities; and
- (6) Adult day care programs.

(g) “Medicare cost report” means the annual cost report, specific to a facility type, that Medicare requires all Medicare-certified facilities to file with a Medicare fiscal intermediary.

(h) “Settled” means that a medicare cost report has been adjusted after review or audit by the medicare fiscal intermediary.

He-C 1550.03 General Requirements for Financial Data Submission.

(a) All health care facilities defined in He-C 1550.02(f) shall be required to file financial data with the department or its agent.

(b) Financial data shall be submitted annually to the department:

(1) Within 4 months following the end of the health care facility’s fiscal year, in accordance with He-C 1550.04(a);

(2) Within 30 days following the request of the department, in accordance with He-C 1550.04(b), which shall be no sooner than 4 months following the end of the health care facility’s fiscal year; or

(3) In the case of the medicare cost report, within 30 days of submission to the medicare fiscal intermediary and within 30 days of receipt of a settled cost report from the medicare fiscal intermediary, in accordance with He-C 1550.04(i).

(c) Financial data may be submitted in either paper format or electronic format, provided that all electronic submissions shall be in pdf format or another read-only format that maintains the documents’ security and integrity.

(d) Provisions of this rule shall not void any contractual requirements for filing financial statements by health care facilities.

(e) Contractual requirements shall not void provisions of these rules.

He-C 1550.04 Required Financial Data.

(a) Each health care facility receiving payments of \$500,000 or more of state or federal funds in the health care facility’s previous fiscal year shall file with the department certified financial statements within 4 months following the end of the health care facility’s fiscal year.

(b) Each health care facility receiving payments of less than \$500,000 of state or federal funds in the health care facility’s previous fiscal year shall, at the written request of the department, file certified financial statements within 30 days of the request.

(c) If a health care facility is not required by either state or federal statute to obtain a certification of audit of its financial statements, and elects not to obtain such certification of audit, the health care facility shall file with the department:

(1) Uncertified financial statements according to the timeframes described in (a) and (b) above; and

(2) A certificate of authenticity which attests that the financial statements are correct in all material respects and is signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification.

(d) A health care facility which is part of a consolidated financial statement may file the certified consolidated financial statements if it includes the consolidating schedules as supplemental information.

(e) A health care facility which is part of a consolidated financial statement, but whose certified consolidated financial statements do not contain the consolidating schedules as supplemental information, shall file with the department uncertified financial statements for the individual health care facility and a certificate of authenticity in accordance with (c)(1) and (2) above.

(f) Filings shall be accompanied by a letter from the health care facility noting the type of ownership, the name of the owner, and the number and type of licensed bed capacity.

(g) Upon written request by the department, a health care facility shall provide additional information regarding the fiscal condition of the facility within 30 days of the request or by some other date as specified in the request.

(h) A health care facility shall be permitted to disclose additional information to explain or clarify the financial data submitted.

(i) The following shall apply to health care facilities that participate in the medicare program and are required to file an annual medicare cost report with a medicare fiscal intermediary:

(1) Such facilities shall submit to the department a copy of the medicare cost report as filed and as settled; and

(2) Any health care facility that files a medicaid cost report shall be exempt from the submission requirement in (1) above, but shall be required to submit the medicare cost report as filed and as settled upon department request.

(j) The department shall make requests in (b), (g), and (i)(2) under the following circumstances:

(1) The department is requested to conduct a fiscal analysis by a department subdivision, a legislative committee, or the governor's office; and

(2) The department's request is directed towards an entire license class, a geographical subset of that license class, or some other subset for which a more targeted fiscal analysis is requested.

He-C 1550.05 Request for Extension of Filing Deadlines.

(a) Health care facilities shall submit a request for an extension of the filing deadline in He-C 1550.04 (a), (b), or (g) above as follows:

(1) Requests shall be made in writing;

(2) Requests shall be sent to the commissioner;

(3) Requests shall be received no later than 20 days prior to the filing deadline; and

(4) Requests shall include the following:

a. Contact information;

b. Reason for requesting the extension; and

c. New deadline.

(b) The commissioner shall grant an extension of the filing deadline if:

(1) The request meets the requirements in (a) above; and

(2) It is determined by the commissioner that the health care facility has demonstrated good cause for an extension.

(c) Good cause in (b)(2) means any circumstance beyond the health care facility's control that prevents that facility from taking a required action, including:

- (1) Death of the person, or in the person's immediate family, who is responsible for preparing the facility's fiscal information;
- (2) Personal injury or serious illness of the person responsible for preparing the facility's fiscal information, or that person's immediate family member; or
- (3) An unforeseeable situation with the facility's audit firm that delays the audit beyond the 4-month period required in He-C 1550.03(b)(1) or (2).

He-C 1550.06 Penalties.

(a) Failure of a health care facility to provide to the department the financial data required in He-C 1550.04 above by the filing deadline, or by the filing deadline as extended pursuant to He-C 1550.05 above, shall result in the imposition of daily penalties in accordance with RSA 126:29.

(b) Pursuant to RSA 126:29, any amount of penalty imposed by the department shall not be allowed as a reimbursable cost item and shall not be recoverable from any category of payment source or patient.

He-C 1550.07 Release of Information.

(a) In accordance with RSA 126:28 and RSA 151-C:2, XI, all financial information required to be filed by this part shall be considered confidential financial information and shall not be made available to the public upon request.

(b) The department shall use the financial information submitted by any or all health care facilities in its analyses of the financial condition of any or all of the health care facilities.

(c) Except as otherwise provided by law, the department may publicly release the results of such analyses founded in (b) above except that all confidential financial data shall be disguised, de-identified, or aggregated in such a way that does not allow for the identification the individual health care facility.

APPENDIX

Rule	Statute Implemented
He-C 1550.01	RSA 126:25
He-C 1550.02	RSA 126:25
He-C 1550.03	RSA 126:25, I(a)
He-C 1550.04	RSA 126:25, I(a)-(c)
He-C 1550.05	RSA 126:25
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